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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 29 October 2004 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004) and has the honour to transmit herewith the national report of Luxembourg as provided for in resolution 1540 (2004) (see annex). This report should be read in conjunction with the report transmitted separately by the Netherlands on behalf of the European Union. In accordance with paragraph 6 (b) of the guidelines for the preparation of national reports pursuant to resolution 1540 (2004), Luxembourg requests the Committee to keep the information provided in its national report confidential.

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Annex to the note verbale dated 29 October 2004 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chairman of the Committee

National report of the Grand Duchy of Luxembourg on the implementation of Security Council resolution 1540 (2004)

As a member State of the European Union, Luxembourg wishes to refer to the European Union common report, which will be transmitted separately to the Security Council Committee established pursuant to resolution 1540. The report covers areas of European Union and European Community competencies and activities in relation to Security Council resolution 1540 (2004) and should be read in conjunction with Luxembourg's national report.

Luxembourg's policy in relation to the provisions of resolution 1540

1. Luxembourg welcomes the adoption by the Security Council of resolution 1540 (2004) and undertakes to comply with and implement all the provisions of that resolution.

2. The risk of seeing terrorists gaining access to weapons of mass destruction and their means of delivery or to chemical, biological, nuclear or radioactive materials poses a growing threat to international peace and security. The particular emphasis of resolution 1540 on non-State actors fills a lacuna in international law.

3. Luxembourg has also signed and ratified the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention. The provisions of those treaties have been incorporated into Luxembourg legislation.

4. Luxembourg has also signed and ratified the Additional Protocol to the International Atomic Energy Agency (IAEA) Safeguards Agreement. That Agreement was ratified by the Act of 1 August 2001 and came into force on 30 April 2004 simultaneously in Luxembourg and all European Union member States.

5. Furthermore, Luxembourg is an active member of export control regimes such as the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement. The control lists of such regimes have been incorporated into Council Regulation (EC) 1334/2000 relating to dual-use goods and technology, which is applicable in Luxembourg.

6. Luxembourg has subscribed to the Hague Code of Conduct against the Proliferation of Ballistic Missiles, an important policy instrument in the fight against the proliferation of ballistic missiles as means of delivery of weapons of mass destruction.

7. The creation of the Proliferation Security Initiative (PSI) addressed an urgent need to combat the illicit transport of weapons of mass destruction and related materials and equipment. Luxembourg endorses the Statement of Interdiction Principles adopted on 4 September 2003 in Paris and intends to actively work towards its success.

8. The European Council adopted at Thessaloniki in June 2003 a Declaration on non-proliferation of Weapons of Mass Destruction. In December 2003, that commitment was given concrete effect through the adoption of a European Union Strategy against the Proliferation of Weapons of Mass Destruction. The Strategy recognizes that non-proliferation, disarmament and arms export control policies make a substantial contribution to the fight against terrorism by reducing the risk of non-State actors gaining access to weapons of mass destruction and their means of delivery as well as to related materials and equipment. As a member of the European Union, Luxembourg fully supports this instrument and is actively working towards its implementation.

National bodies responsible for the implementation of resolution 1540 (2004)

Ministry of Foreign Affairs

The Policy Department of the Ministry of Foreign Affairs is the focal point for relations with the Security Council Committee established pursuant to resolution 1540. At the national level, the Ministry of Foreign Affairs ensures coordination among the relevant ministries responsible for the implementation of resolution 1540.

Under the direction of the Ministry, a national authority is responsible for the obligations under the Chemical Weapons Convention and for liaising with the Organization for the Prohibition of Chemical Weapons (OPCW).

Ministry of State

The intelligence service of the Ministry of State is responsible for proactively gathering, analysing and processing intelligence relating to any activity that threatens or is likely to threaten the security of the Grand Duchy of Luxembourg, States to which it is bound by a joint defence agreement, or of international organizations that are based or operate in Luxembourg or Luxembourg's international relations.

Licensing Office, Ministry of Foreign Trade

The Licensing Office is responsible for the issuance of licenses for the export (and transit) of goods that are either on the list of military weapons and equipment or the list of dual-use goods and related technology.

Every application is processed taking into account the relevant goods and final destination/country of destination. An end-user certificate is required for every export application. Applications are processed on the basis of criteria established by European Union working groups.

Applications for export licences may be denied if: a particular transaction is deemed harmful to the interests of Luxembourg or its allies; the goods to be exported are to be or can be used for the development, manufacture, handling, operation, maintenance, stockpiling, detection, identification or dissemination of chemical, biological or nuclear weapons or the development, manufacture, maintenance or stockpiling of missiles for the delivery of such weapons; a European Union member State or another State party to any non-proliferation and export control regime has already denied a similar transaction and notified its other

partners accordingly; the application is not properly completed, is incomplete or inaccurate and the exporter refuses to cooperate with the authorities. A similar approach is used with respect to the processing of applications for the transit of strategic goods.

The Office works closely with the Customs and Excise Department, which is responsible for the effective control of goods leaving the country. The Office may seek information from the State Intelligence Service on sensitive firms and end-users. Cooperation with the Radiation Protection Division is vital for its input based on its expertise in nuclear issues.

Customs and Excise Department, Ministry of Finance

As part of the efforts to combat fraud and drug addiction as well as to control the export, transit and import of all kinds of sensitive goods, including the chemical precursors of narcotic drugs, biological, chemical and nuclear weapons and dual-use goods, the Customs and Excise Department established on 1 January 2004, in the air freight section of Luxembourg airport, a new special unit solely responsible for air freight issues. The Unit, called the Risk-Analysis and Targeting Unit (UARC), which is supported by a surveillance brigade, is responsible for targeting sensitive air freight leaving and entering Luxembourg territory through Findel airport. In Luxembourg, Findel airport is the only direct point of entry into and exit from European Union territory, since the country is surrounded by European Union member States.

Similarly, under the Act of 5 August 1963 on the monitoring of the import, export and transit of goods, UARC has conducted continuing inspections by targeting documents or goods transiting through Luxembourg airport.

Radiation Protection Division, Ministry of Health

The Radiation Protection Division is responsible for protection of the public against the dangers of radiation. It is responsible for maintaining an updated inventory of substances, materials and equipment that emit ionising radiation.

The Radiation Protection Division also has jurisdiction, together with the Licensing Office, over transfers of nuclear material, equipment and technology.

The Radiation Protection Division, together with the Ministry of Foreign Affairs, the Licensing Office, the Customs and Excise Department and the Intelligence Service, is responsible for preventing, investigating and reporting violations with respect to the implementation of legislation relating to weapons of mass destruction.

Compliance by Luxembourg with the requirements of individual paragraphs of resolution 1540 (2004)

Paragraph 1

Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

Luxembourg does not provide any support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

Paragraph 2

Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

– All the obligations under the Nuclear Non-Proliferation Treaty, the Safeguards Agreement and Additional Protocol, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention have been incorporated into Luxembourg's legislation:

  • The Act of 20 December 1974 ratifying the Nuclear Non-Proliferation Treaty;

  • Act of 1 August 2001 ratifying the Additional Protocol on the strengthening of the non-proliferation of nuclear weapons designed to detect clandestine nuclear activities;

  • The Grand-Ducal Regulation of 3 June 1997 implementing the Act of 10 April 1997 ratifying the Chemical Weapons Convention;

  • The Act of 28 November 1975 ratifying the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;

  • The amendment to the Act of 10 April 1997 ratifying the Chemical Weapons Convention provides for penalties against anyone who attempts to use, develop, produce, transfer or stockpile chemical weapons. Under Article 4, Customs and Excise officers holding the rank of deputy inspector or higher can act as police officers (*officiers de police judiciare*) with authority to investigate and report infringements of the Act wherever they may occur in the country;

  • The Act of 15 March 1983 on weapons and ammunition introduces into Luxembourg legislation the prohibition of the use of weapons or other devices containing lachrymatory, toxic, asphyxiating, irritant or similar substances to attack people;

  • The Act of 12 August 2003 on the suppression of terrorism and of its financing and the approval of the International Convention for the Suppression of the Financing of Terrorism.

Luxembourg is preparing new legislation on the strengthening of sanctions against non-State actors for weapons of mass destruction or related activities.

Paragraph 3

Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological

weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

– Amendment to the Act of 25 March 1963 on the protection of the general public against the dangers of ionising radiation.

The Radiation Protection Division draws up an inventory at the national level of all substances, materials and equipment that emit ionising radiation. That inventory is regularly updated;

– The Grand-Ducal Regulation of 31 July 1989 on transfers of nuclear materials, equipment and technology and the conditions for their physical protection, amended by the Ministerial Regulation of 3 February 1993.

(b) Develop and maintain appropriate effective physical protection measures

– The Grand-Ducal Regulation of 31 July 1989 on transfers of nuclear materials, equipment and technology and the conditions for their physical protection, amended by the Ministerial Regulation of 3 February 1993.

The import, possession, production or transfer of nuclear materials, equipment and technological data are required to be the object of effective physical protection in order to prevent any unauthorized access, use or handling; levels of physical protection are to be at least equivalent to those recommended by IAEA or provided for under international agreements;

– Luxembourg is a party to the Treaty establishing the European Atomic Energy Community (EURATOM). The safeguards agreements provided for under Chapter 7 of the Treaty are implemented by the European Commission, which ensures that nuclear materials are not diverted from their civilian use in Luxembourg;

– Luxembourg has signed the IAEA Code of Conduct on the Safety and Security of Radioactive Sources;

– Act of 11 April 1985 ratifying the Convention on the Physical Protection of Nuclear Material.

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

– The Act of 5 August 1963 on the monitoring of the import, export and transit of goods, as amended. Customs and Excise officials are authorized to investigate and report violations of the provisions of the Act and its implementing regulations throughout the country. Violations of the Act are penalized under articles 231, 249-253 and 263-284 of the General Act on Customs and Excise;

– Community Customs Code (Council Regulation (EEC) No 2913/92);

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

– The Act of 5 August 1963 on the monitoring of the import, export and transit of goods, as amended, covers licences for the import, export and transit of goods as well as technology transfer. Implementing regulations deal with specific items such as dual-use goods. Penalties for the violation of this Act are contained in the General Act on Customs and Excise. Administrative sanctions are also provided for;

– The Grand-Ducal Regulation of 31 October 1995 on the import, export and transit of arms, munitions and equipment specifically intended for military use and related technology prohibits the export, import and transit of chemical and biological weapons. This regulation is based on the Act of 5 August 1963;

– The Grand-Ducal Regulations of 5 October 2000 govern the export and transit of dual-use goods and technology. These instruments, based on the Act of 5 August 1963, implement Council Regulation (EC) No 1334/2000 on dual-use items, and add controls on goods in transit;

– Community Customs Code (Council Regulation (EEC) No 2913/92).

Paragraph 6

Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

Luxembourg is an active member of the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement. The control lists of these regimes are integrated into the regularly updated list corresponding to Council Regulation (EC) No 1334/2000, which is applicable in Luxembourg pursuant to the Grand-Ducal Regulations of 5 October 2000 on the export and transit of dual-use goods and technology.

The Grand-Ducal Regulation of 31 October 1995, on transfers of arms and munitions, also includes a list of the items covered.

Paragraph 7

Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

Luxembourg recognizes that certain States may require outside assistance in order to implement effectively the provisions of the resolution.

Through the European Union, Luxembourg assists certain States in setting up export control mechanisms. The Union also plans to provide assistance in the framework of the implementation of resolution 1540 (2004).

Paragraph 8

Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

In the framework of the European Strategy against the Proliferation of Weapons of Mass Destruction, adopted in December 2003, and through its Council Common Position No. 2003/805/CFSP of 17 November 2003, the European Union has undertaken to work towards the strengthening and universalization of multilateral treaties in the areas of non-proliferation and disarmament.

The Union regularly approaches States which are not parties to the multilateral treaties, in order to promote the universalization of those agreements.

In the framework of the Nuclear Suppliers Group, the Union is working towards the establishment of the Additional Protocol as a condition of supply, thereby encouraging the universalization of Safeguards Agreements and of the Additional Protocol.

The Union incorporates non-proliferation clauses into agreements with third States.

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

Luxembourg has enacted laws and regulations to ensure compliance with its commitments under the key multilateral non-proliferation and disarmament treaties:

- Act of 20 December 1974 ratifying the Treaty on the Non-Proliferation of Nuclear Weapons;
- Act of 1 August 2001 ratifying the Additional Protocol on the strengthening of non-proliferation of nuclear weapons in order to detect clandestine nuclear activities;
- Act of 28 November 1975 ratifying the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;
- Act of 10 April 1997 ratifying the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction;
- Grand-Ducal Regulation of 3 June 1997 on the implementation of the Act of 10 April 1997 ratifying the Chemical Weapons Convention;
- Amendment to the Act of 10 April 1997 on chemical weapons;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the

Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

The European Strategy against the Proliferation of Weapons of Mass Destruction calls for the provision of sufficient financial means to support specific IAEA projects, OPCW and the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). The European Union is currently preparing joint actions to provide financial support for IAEA and OPCW projects.

Luxembourg continues to provide its full support for the goals and activities of IAEA, OPCW and CTBTO. In addition to its compulsory contribution to these organizations' budgets, Luxembourg also makes voluntary financial donations to the IAEA Technical Cooperation Fund.

Luxembourg supports the strengthening of the Biological Weapons Convention, and particularly the creation of a verification mechanism and hopes that the 2006 Review Conference will take a decision to that effect.

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

In Luxembourg, the State collaborates closely with industry. The Licensing Office is responsible for informing enterprises of their obligations in the area of non-proliferation.

Paragraph 9

Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

Luxembourg attaches great importance to international cooperation and dialogue in the areas of non-proliferation and disarmament. It promotes dialogue and cooperation in international forums, since the threat of weapons of mass destruction is a global one and must be dealt with at the planetary level.

Paragraph 10

Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

The Proliferation Security Initiative (PSI) is a new instrument intended to intercept illicit traffic in nuclear, chemical and biological weapons, related materials, and their means of delivery. This initiative is a major contribution to international efforts against the proliferation of weapons of mass destruction, and complementary to the European Strategy against the Proliferation of Weapons of Mass Destruction. The European Union strongly supports the Statement of Interdiction Principles of PSI, adopted at Paris on 4 September 2003.